

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EL-CID RASHEED WALLACE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TINA M. DIMICK, a/k/a TINA MARIE DIMICK,

Respondent,

and

CLARENCE WALLACE

Respondent-Appellant.

UNPUBLISHED

June 26, 2008

No. 282574

Wayne Circuit Court

Family Division

LC No. 89-281939-NA

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). This Court reviews the trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *Trejo, supra* at 355-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

There was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(a)(ii). Respondent had not visited El-Cid in over 91 days nor sought custody of him during that period. Respondent's last visit with El-Cid was in August 2007.

Termination under MCL 712A.19b(3)(c)(i) was also proper because the conditions that led to the adjudication continued to exist. At the time of the permanent custody hearing, respondent continued to be on probation for an uttering and publishing conviction because he had not paid related court costs. In addition, by the time of the permanent custody trial, respondent had not demonstrated that he was drug free. To the contrary, respondent's medical records, which were admitted into evidence at the permanent custody hearing, indicated that respondent used marijuana and cocaine and last tested positive for cocaine in 2006. Respondent only submitted two of the three requested drug screens and of those two, only one was submitted on the day requested.

The trial court also ordered respondent to complete parenting classes. But he only attended three parenting classes and did not complete the session. Further, at the time of the adjudication respondent said his home was being repaired and not ready for placement of El-Cid. By the time of the permanent custody hearing, respondent was living with his sister whose home could only be used as a temporary residence. He continued to be without independent housing.

The court also did not err in terminating respondent's parental rights under MCL 712A.19b(3)(g). Respondent's treatment plan required him to submit drug screens, visit El-Cid, participate in individual therapy and domestic violence counseling, attend parenting classes, and obtain housing and employment. Yet, respondent never completed individual therapy or participated in domestic violence counseling. He also only completed two of the three ordered drug screens and submitted one of the screens a day late. Further, respondent's medical records revealed that he has a history of untreated cocaine and marijuana use that would interfere with his ability to properly care for El-Cid. Respondent's failure to fully comply with his treatment plan demonstrated his inability to provide proper care and custody. See *In re JK*, supra at 214 (“[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child.”).

Except for a brief period of time, respondent has only had supervised visits with El-Cid. El-Cid was never placed with respondent because respondent failed to demonstrate the ability to provide proper care for him. Respondent also did not visit El-Cid on a consistent basis. When respondent did visit, he was not always prepared. He did not bring a diaper bag or a car seat to visits and had to borrow these supplies from El-Cid's foster parent.

Respondent's inability to provide proper care of El-Cid was also demonstrated by his lack of independent housing. Throughout the case, respondent lived with his sister who would not commit to allowing respondent and El-Cid to live with her on a long-term basis. Respondent also did not seek regular treatment for his mental health issues or for the prostate cancer with which he was diagnosed in January 2007. As the court correctly noted, respondent “will not follow through with services, in his own life or for his child.” This unwillingness to follow through with services and health treatment demonstrated his inability to act responsibly or provide proper care for El-Cid.

The court also did not err in terminating respondent's parental rights under MCL 712A.19b(3)(j). El-Cid would have been at risk in respondent's care given his history of untreated cocaine and marijuana use. El-Cid would also be at risk of harm in respondent's care because he had a long history of untreated mental illness.

Finally, the trial court did not clearly err in its best interests determination. There was no evidence in the record that it was not in El-Cid best interests to terminate respondent's parental rights. To the contrary, the evidence established that respondent was unwilling to follow through with services or address the issues that put El-Cid at risk of harm in his care. A young child like El-Cid requires a stable home environment and a reliable caregiver. There is no evidence that termination of respondent's parental rights was contrary to El-Cid's best interests. *Trejo, supra* at 356-357.

Affirmed.

/s/ Patrick M. Meter

/s/ Michael R. Smolenski

/s/ Deborah A. Servitto